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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,613	02/04/2004	Roger Keith Stager	ALA-PT011	3439

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VOLPE AND KOENIG, P.C. NET APP
30 S. 17TH STREET
UNITED PLAZA, SUITE 1600
PHILADELPHIA, PA 19103

EXAMINER

LE, DIEU MINH T

ART UNIT	PAPER NUMBER
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2114

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/771,613

Applicant(s)

STAGER ET AL.

Examiner

Dieu-Minh Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/16, 12/14, 1/04 & interview 1/5/07. ¹⁰⁰⁶
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/14/06, 1/4/07</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This Office Action is in response to the amendment filed 10/16/2006 and the interview on 12/08/06, 12/21/06 and 01/05/2006 in application 10/771,613.
2. Claims 1-16 are again presented for examination.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-16 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Zalewski et al. (U.S. 7,032,126 hereafter referred to as Zalewski_126) in view of Zalewski et al. (U.S. Publication No. 2005/0010529 hereafter referred to as Zalewski_529).

This rejection is being applied for the same reasons set forth in the previous Office Action mailed 07/14/2006. As per claims 1-16 see the previous office action for the detailed teaching of Zalewskis as well as the reasons and motivation for combined.

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Applicant asserts that Zalewski_126 and Zalewski_529 failed to teach or suggest the following:

- a. the primary volume can be rewound to any point in time, regardless of whether the primary volume is in a stable or not at the previous point in time;
- b. the concept of rewinding to "any point in time" (PIT).

Examiner respectfully transverses Applicant's argument as follows:

a. First, Examiner would like to bring Applicant attention to Zalewski_126's method and apparatus for creating a dynamic storage for data recovery and continuous data protection [abstract, fig.1-3, col. 1, lines 40-50; col. 2, lines 20-27]. Zalewski_126 clearly demonstrated the failover operations, snapshot, and a point-in-time (APIT/PIT) capability used to support failover, data recovery/protection process including identifying data (i.e., previous state data), preventing data loss, etc... in a plurality of data storage volumes [fig. 1-3, col. 4, lines 30-50]. In addition, Zalewski_529 explicitly

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illustrated the failover operations, snapshot, and a point-in-time (APIT/PIT) used to support failover, data recovery/protection process including data mirroring and policy in a plurality of data storage volumes including primary and secondary set of data [abstract, fig. 1-4, par. 0005, 0011, 0017-0019]. It is clear that both Zalewski_126 and Zalewski_529 do teach applicant's invention.

Second, in response to Applicant's argument that the references fail to show certain features of Applicant's invention, it is noted that the feature upon which Applicant relies (i.e., the primary volume can be rewound to any point in time, regardless of whether the primary volume is in a stable or not at the previous point in time) is not recited in the rejected claim. Although the claims is interpreted in light of the specification, limitations from the specification is not read into the claims. *In re Van Guens*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Third, Zalewski_126 clearly demonstrated the failover operations, snapshot, and a point-in-time (APIT/PIT) capability used to support failover, data recovery/protection process including identifying data,

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preventing data loss, etc... in a plurality of data storage volumes [fig. 1-3, col. 4, lines 30-50]. Zalewski_126 further illustrated the capability of data mapping, reading, writing, mirroring, etc... (i.e., data structures) including data policy in supporting data detection, correction, and protection process [col. 3, lines 55 through col. 4, lines 50].

Therefore, it is obvious to an ordinary skill in the art that the combination of the Zalewski_126 and Zalewski_529's inventions do clearly teach applicant's limitation.

b. First, it is not true that both Zalewski_126 and Zalewski_529 failed to teach "the concept of rewinding to "any point in time" (PIT)". This is because Zalewski_126 demonstrated capability for creating a dynamic storage for data recovery and continuous data protection [abstract, fig.1-3, col. 1, lines 40-50; col. 2, lines 20-27]. Furthermore, Zalewski_529 explicitly illustrated the failover operations, snapshot, and a point-in-time (APIT/PIT) used to support failover, data recovery/protection process including data mirroring and policy in a plurality of data storage volumes including primary and secondary set of data [abstract, fig. 1-4, par.

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0005, 0011, 0017-0019]. By performing data protection continuously process, data can be rewound at any point in time in supporting the continuously data protection within data storage system.

Second, Zalewski_126 applied the failover operations, snapshot, and a point-in-time (APIT/PIT) capability to perform failover, data recovery/protection process including identifying data (i.e., previous state data), preventing data loss, etc... in a plurality of data storage volumes [fig. 1-3, col. 4, lines 30-50]. By utilizing the snapshot technology therein, data within memory volume can be rewound to any point in time (PIT) in order to perform data/error detection, protection, and correction process [col. 4, lines 20-50].

Third, as indicate in previous office action that the combination of Zalewski_126's failover operations, snapshot, and a point-in-time (APIT/PIT) used to support failover, data recovery/protection process including identifying data (i.e., previous state data), preventing data loss, etc... in a plurality of data storage volumes and Zalewski_529's applying the failover operations, snapshot,

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and a point-in-time (APIT/PIT) *used to support failover, data recovery/protection process including data mirroring and policy in a* plurality of data storage volumes including primary and secondary set of data do teach applicant's invention. By utilizing this approach, the multi-data storage volumes data system including backup capability (i.e., OS failover) can enhance its operation performance, more specifically to ensuring the error detected, corrected, and replaced (i.e., backup) in proper and efficient manner.

Applicant's arguments filed 10/16/2006 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

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5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dieu-Minh Le whose telephone number is (571) 272-3660. The examiner can normally be reached on Monday - Thursday from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571)272-3644.

The Tech Center 2100 phone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DIEU-MINH THAI LE
PRIMARY EXAMINER
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DML
01/07/06